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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,499

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EXAMINER

DOUGHERTY, SEAN PATRICK

ART UNIT

PAPER NUMBER

3736

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,499	Applicant(s) HANSSON, HANS-AXEL	
	Examiner SEAN P. DOUGHERTY	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is responsive to the documents filed 10/11/2010.

Response to Amendment

The amendment(s) filed 10/11/2010 by the Applicant in response to the previous Office action mailed 06/09/2010 have been considered by the Examiner. The Examiner acknowledges new claim(s) 19-29 and cancelled claim(s) 1-18.

The indicated allowability of claims 9, 10, 11 and 13 is withdrawn in view of the reference(s) to Mirsky, et al. Rejections based on the newly cited reference(s) follow:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 19-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/78591 to Blake et al. (hereinafter "Blake", cited in IDS) in view of US 7010393 B2 to Mirsky et al. (hereinafter "Mirsky").

Blake discloses an automatic system for taking of a fluid sample from a sample site of a living text object, comprising:

- catheter means comprising a three-way junction (junction formed generally around element 22; best seen in Figures 4A-4N) configured to be located in proximity to the sample site (12), the three-way junction is connected to a first catheter means (stretching from element 28 to element 22), a second catheter means (stretching from element 22 to generally around element 24) and a sample-taking end (16);
- a valve (30) connected to the first catheter means, the valve having an inlet (catheter located below element 30) for an immiscible fluid to be aspirated into the first catheter means ("air bubble" best seen aspirated in Figure 4E), and
- pumping means (32) connectable to the catheter means and configured to aspirate an amount of the immiscible fluid into the first catheter means (pg. 10, ll. 10 and 16-22) and to move the amount of the immiscible fluid to the three-way junction (pg. 10, ll. 24-26) and arrange a first part of the immiscible fluid (right portion of element 72 best seen in Figure 4E) in a part of the second catheter means (best seen in Figure 4G) and a second part of the immiscible fluid (left portion of element 72 best seen in Figure 4E) in a part of the first catheter means

Art Unit: 3736

- (best seen in Figure 4G) such that the first and second parts of the immiscible fluid separate a taken sample from the rinsing fluid;
- whereby the first and second parts of the immiscible fluid being configured to separate a taken sample from the rinsing fluid (best seen in Figure 4H; pg. 10, ll. 26-31);
 - a source of rinsing fluid (36) connectable to the catheter means (best seen in Figures 4A-4N) by a connection (beaker in which element 36 resides) and configured to supply a rinsing fluid from the source to the catheter means;
 - where the pumping means are configured to provide a flow of rinsing fluid from the source of rinsing fluid through the catheter means to a waste tube at the delivery end of the catheter means - the Examiner notes the pumping means is seen providing the rising fluid from the source of the rinsing fluid through the catheter means to a waste tube (26) as best seen in Figures 4A-4N;
 - where the pumping means further being configured to control the flow rate and the flow direction of a fluid comprised in the catheter means such that the fluid flow can pass by the sample-taking end when flowing from one of the first and second catheter to the other. Note that fluid (the "airbubble") can be seen as passed by the sample-taking end when flowing from the first catheter as best seen in Figure 4G. Therefore, since this limitation is accomplished, the pumping means of Blake is clearly is configured to control the flow rate and the flow direction of a fluid comprised in the catheter means since the fluid flow passing the sample taking end is achieved;

Art Unit: 3736

- where the sample-taking end is configured to be placed at the sample site (note sample-taking end 16 at the sample site 12 as best seen in Figures 4A-4N), where the pumping means being configured to move the first part of the immiscible fluid towards an end opening of the sample-taking end (the end opening is considered the area generally around element 22 where the first and second catheter means meet) and to take a fluid sample when the first part is located at the end opening (note the "airbubble" is located at the end opening as best seen in Figure 4G, and where the pumping means is configured to transport the taken sample from the sample-taking end (best seen in Figure 4I) to a sample-delivery end (26) configured to deliver the taken sample to a sample tube (70);
- a plurality of valves (30/20/24) arranged at the catheter means and configured to control the flow path of the fluid in the catheter means;
- a control unit (58) connectable to the pumping means and the plurality of valves (best seen in Figure 2) and configured to control the operation of the pumping means and the plurality of valves;
- Blake discloses a double lumen catheter means - the Examiner notes the catheter below valve 30 is a first catheter and the catheter below valve 20 is a second catheter, making two, or double lumens; and
- analyzing means configured to analyze the taken fluid sample a source of a drug solution ("acid wash" pg. 9, ll. connectable to the catheter means, the pumping

Art Unit: 3736

means being configured to transport an amount of the drug to the sample-taking end and supply the drug to the sample site.

Blake discloses a first, second and third pumping means (32) as seen in Fig. 1. Blake discloses that the pumping means are configured to provide rinsing fluid passing by the sample-taking end without entering when flowing from the first catheter means to the second catheter means, for instance, as best seen in Fig. 4A. Blake discloses the claimed invention as set forth and cited above except for a second pump and third pump, where the first pumping means is configured to provide a pushing action equal to a suction action provided by the second pumping means, where the first and second pumping means are configured to operate separately and a third pumping means configured to operate when the first and second pumping means are operated separately and to compensate for action of an active one of the first and second pumping means.

Mirsky teaches a pipeline network operated by multiple pumps (col. 3, ll. 4-14). Mirsky teaches that equating suction action between pumps (col. 5, ll. 64-65) and also teaches where pumps are configured to operate separately (col. 6, ll. 17-20). Mirsky teaches a third pump may be used (col. 6, ll. 24-25). Note a third pump in Mirsky would be capable to compensate for action of an active one of the first and second pumping means. One having an ordinary skill in the art at the time the invention was made would have found it obvious to modify Blake with the second and third pumping means of Mirsky as Mirsky teaches that multiple pumps may be operated in a network to control flow rate or pressure and that the pumps can be arranged in an infinite number of ways

Art Unit: 3736

to achieve a flow objective. Therefore, a skilled artisan would have found the combination of references obvious.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN P. DOUGHERTY whose telephone number is (571)270-5044. The examiner can normally be reached on Monday-Friday, 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sean P. Dougherty/
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736